

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2258/90 and
T.A. No. MP-1256/91

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DATE OF DECISION 7.6.1991

~~The Delhi Income Tax Scheduled Castes and Scheduled Tribes Employees Welfare Association, New Delhi (Regd.)~~ Petitioner(s) Applicant
~~Mrs. Shyamala Pappu, with Sh. S. K. Bisaria~~ Advocates for the Petitioner(s) Applicant
 Versus
Union of India and Others Respondent
Mr. Vinod K. Kantha with Advocates for the Respondent(s)
Mr. R. S. Aggarwal

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The Hon'ble Mr. P. K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D. K. Chakravorty, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Ye,
2. To be referred to the Reporter or not? Ye)
3. Whether their Lordships wish to see the fair copy of the Judgement? /No
4. Whether it needs to be circulated to other Benches of the Tribunal? /No

(Judgement of the Bench delivered by Hon'ble
Mr. P. K. Kartha, Vice-Chairman)

The point for consideration in this application is whether or not the officers belonging to the Scheduled Caste and Scheduled Tribe communities are entitled to claim reservation in respect of all posts in Group 'A' Services, irrespective of the scale of the post concerned.

The matter had come up for consideration of the Supreme Court in Bihar State Harijan Kalyan Parishad Vs. Union of India & Others, 1985 (2) SCC 644 and in Syndicate Bank Scheduled Castes and Scheduled Tribes Employees Association (Regd.) Vs. the Union of India, 1990 (2) SCALE 229 and in

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the order dated 1st April, 1991 in Review Petition No.

607 and 608 of 1990 in Syndicate Bank SC/ST Employees

Association Vs. Union of India and Others.

2. Broadly speaking, the stand of the applicant Association is that reservation should apply to all Group 'A' posts and they rely upon the aforesaid decisions in their support. The stand taken by the respondents is that reservation would apply only upto certain categories of Group 'A' posts and that the aforesaid decisions are distinguishable and do not declare the law on the subject within the meaning of Article 141 of the Constitution.

3. The applicant Association represents all the employees and officers belonging to the Scheduled Castes and Scheduled Tribes working in the Income Tax Department at Delhi. Their grievance is that they are grossly under-represented in the Indian Revenue Service Group 'A' Services, as would appear from the following table:-

S. No.	Post & Grade	Total no. of posts	Total SC/ST in all over India	SC/ST should be in all India	Posted at Delhi	SC/ST Officer in Delhi
1.	2.	3.	4.	5.	6.	7.
1.	Members Central Board of Direct Taxes	7	Nil	2	7	Nil
2.	Chief Commissioner of Income Tax/DG of I.T. (Higher Grade) Rs. 7300-7600)	40	2	7	16	Nil

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1.	2.	3.	4.	5.	6.	7.
3.	Commissioner of Income Tax/Dir. of Income Tax Rs.5900-6700 Pre-revised Scales: Level I - Rs.2500- 2700 + Spl. Pay Level-II, Rs.2250-2500	293	24	64	54	Nil
4.	Dy. Commr./Dy. Dir. of I.T. Selection Grade (Rs.4500-5700) Pre-revised Rs.2000-2250 Ord. Grade (Rs.3700-5000) Pre-revised Rs.1500-2000	876	165	180	171	24
5.	Asstt. Commr./ A.D. of Income Tax Sr. Scale (Rs.3000-4500) (Pre-revised: Rs.1100-1600) Jr. Scale (Rs.2200-4000) (Pre-revised Rs.700-1300)	1557	257	378	176	21

4. The applicants have stated that in the cadre of Members, C.B.D.T., no persons belonging to SC/ST have been nominated/appointed till date. Similarly, in the post of Chief Commissioner, Income Tax, there are only two persons promoted/appointed on their own merits and not on the basis of the reservation granted to the members belonging to SC and ST personnel.

5. The Indian Revenue Service Rules, 1988 contain the following rule regarding the filling up of posts

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belonging to the Group 'A' Services:-

"(4) The selection of officers for promotion shall be made by selection on merit, except in the case of promotion to the post in the grade of Assistant Commissioner on Income-Tax (Senior Scale) and Deputy Commissioner of Income Tax (Selection Grade) which shall be in the order of seniority subject to rejection of the unfit on the recommendation of the Departmental Promotion Committee constituted in accordance with Schedule-III."

6. The above mentioned rules also contain a provision that "Nothing in these rules shall affect reservation, relaxation of age-limit and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Government from time to time in this regard". The rules are, however, silent in respect of reservation and relaxation in matters of promotion to the S.C. and S.T. departmental candidates in Group 'A' Services.

7. Provisions for reservations for SC/ST employees have been made in the administrative instructions issued by the Government from time to time. The instructions issued from 1968 onwards have been mentioned in the O.M. dated 12.9.74 issued by the Department of Personnel and Administrative Reforms, the material portion of which reads as under:-

"The undersigned is directed to say that in this Department's O.M. No. 27/2/71-Est. (SCT)

dated the 27th November, 1972, reservations have been provided at 15% for Scheduled Castes and 7½% for Scheduled Tribes in posts filled by promotion on the basis of seniority subject to fitness in grades or services in which the element of direct recruitment, if any, does not exceed 50%. In Ministry of Home Affairs O.M. No. 1/12/67-Est.(C) dated the 11th July, 1968 read with O.M. No. 27/25/68-Est.(SCT) dated the 25.3.1970 and this Department O.M. No. 10/41/73-Est.(SCT) dated the 20th July, 1974, reservations at 15% for Scheduled Castes and 7½% for Scheduled Tribes have been provided in posts filled by promotions on the basis of selection to and/or in posts belonging to class IV, III and II, and from Class II to the lowest rung or category in Class I, in grades or services in which the element of direct recruitment, if any, does not exceed 50%. In Ministry of Home Affairs O.M. No. 1/9/69-Est.(SCT) dated the 26th March, 1970, certain concessions have been provided to Scheduled Castes and Scheduled Tribes for promotion by selection to posts within Class I which carry an ultimate salary of Rs. 2000 p.m. or less. References have been received in this Deptt. seeking clarification whether the above orders regarding reservations/concessions for Scheduled Castes and Scheduled Tribes in promotion would apply to appointment made to the Selection Grades in various services/posts. The matter has been carefully examined and it is now clarified that since appointment to Selection Grade also constitutes promotion, the appropriate orders relating to reservations/concessions for Scheduled Castes and Scheduled Tribes in promotions made by 'selection' or on the basis of 'seniority subject to fitness' would apply to appointments to the Selection Grade, according as such appointments are made on the basis of 'Selection' or 'Seniority-cum-fitness'. *An*

8. The pay level has been revised from time to time as per the recommendations of the Pay Commission. The last modification on the subject is contained in the O.M. dated 1.11.1990 issued by the Department of Personnel & Training which reads as follows:-

"The undersigned is directed to refer to the O.M. No.1/9/69-Estt.(SCT) dated 26th March, 1970 as amended vide O.M. No.1/10/74-Estt.(SCT) dated 23.12.1974 and O.M. No.36012/12/88-Estt.(SCT) dated 21.9.1988 on the above mentioned subject (copy enclosed).

2. Though in the O.M. cited above it has been clearly mentioned that in promotion by selection within Class I (now Group 'A') to posts which carry an ultimate salary of Rs.2000/- per month or less (since revised to Rs.5700/-), the Scheduled Castes/Scheduled Tribes will be given a concession namely 'those Scheduled Castes/Scheduled Tribes who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion', doubts have been expressed in certain quarters as to whether the concession given herein above is a reservation or a concession.

3. It is hereby clarified that in promotion by selection within Group 'A' to posts which carry an ultimate salary of Rs.5700/- p.m., there is no reservation."

9. The Bureau of Public Enterprises had issued certain guidelines in this regard. Para.9 of the Presidential Directive stated as follows:-

"There is no reservation in promotions by selection from one Group 'A' post/service to another Group 'A' post/service but in promotions by selection to posts/Services within Group 'A' which carry an ultimate salary of Rs.2,250/- per month, the Scheduled Castes/

Scheduled Tribes Officers, who, by virtue of their position in the seniority list, and zone of consideration, come within the number of actual vacancies for which the select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion. Their position in the select list would, however, be the same as assigned to them by the Departmental Promotion Committee on the basis of their record of service. They would not be given, for this purpose, one grading higher than the grading otherwise assignable to them on the basis of their record of services."

10. In the case of Bihar State Harijan Kalyan Parishad Vs. Union of India and Others, while dealing with the reservation in Group 'A' Services belonging to the Steel Authority of India and interpreting para.9 of the Presidential Directive, the Supreme Court observes thus:-

"A close perusal of the directive and in particular paragraph 9 which deals with "concessions to employees of Scheduled Castes and Scheduled Tribes in promotions by selection method "makes it abundantly clear that the rule of reservation is also applicable to promotions by selection to posts within Group 'A' which carry an ultimate salary of Rs.2250 per month or less, but that the procedure is slightly different than in the case of other posts. While the rule of reservation applies to promotions by selection to posts within Group 'A' carrying a salary of Rs.2250/- per month or less, it is prescribed that only those officers belonging to the Scheduled Castes and Scheduled Tribes will be considered for promotion who are senior enough to be within the zone of consideration. Thereafter a Selection List depending upon the number of vacancies would be drawn up in which would also be included those officers belonging to the Scheduled Castes and Scheduled Tribes who are not considered unfit for promotion. Their position in the Selection List would be that assigned to them by the Departmental Promotion Committee on the basis of the record of service. In other words, their inclusion in the Selection List would not give them seniority, merely by virtue of their belonging to the Scheduled Castes and Scheduled Tribes over other officers placed above them in the Select List by the Departmental Promotion Committee. This appears to us to be the only possible interpretation of paragraph 9 of the directive."

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11. The Supreme Court further observed that para. 9 of the Presidential Directive nowhere provides that the rule of reservation does not apply to promotion by selection to posts within Group 'A' which carry an ultimate salary of Rs. 2250/- per month or less. On the other hand, it proceeds on the basic assumption that the rule of reservation does apply but prescribes a certain procedure to be followed, a procedure different from the usual procedure adopted in filling up posts reserved for Scheduled Castes and Scheduled Tribes.

12. It is pertinent to mention that the aforesaid decision did not consider the question of applicability of reservation to posts in Group 'A' which carry salary above Rs. 2250/- (pre-revised).

13. In the case of Syndicate Bank S.C. and S.T. Employees Association, the Supreme Court dealt with the applicability of reservation to Group 'A' officers posts which are Class I posts containing different grades called 'Junior Management Grade Scale I, Middle Management Grade Scale II, Middle Management Grade Scale III and like this upto Grade Scale VII. After discussing the case of Bihar State Harijan Kalyan Parishad, the Supreme Court held in its judgement dated

10.8.1990 as follows:-

"Even though the promotional posts are based on selection method, the rule of reservation will apply to posts within Group 'A' and the benefit of reservation policy to members of SC and ST cannot be denied on the ground that promotional posts are to be filled by method of selection. We find no distinction in the case of employees in the Officers' Group in JMGSI of the Bank from the officers falling in Group 'A' under the Steel Authority of India Ltd., for the purpose of applying reservation policy..... It is further decided that though Group 'A' posts are selection posts, still the reservation policy is applicable to such posts....."

14. The Review Petition filed by the Union of India against the aforesaid judgement was dismissed by the Supreme Court by the following observations:-

"It may also be noted that our judgement was based on the decision of Bihar State Harijan Kalyan Parishad's case (supra) in which this Court interpreted para. 9 of the President's directive which dealt with the concessions of Scheduled Castes and Scheduled Tribes in promotion by selection method. Thus the case was decided by us on the basis of the particular facts and circumstances of the case brought to our notice at the time of hearing of the case.

We may, however, make it clear that in the present case we were only concerned with Scheduled Castes and Scheduled Tribes employees of the Syndicate Bank and the policy of reservation with regard to such employees. We have decided the matter on the basis of the material made available to us at the time of arguments and on the basis of contentions made by counsel representing the respective parties. The case as such was decided on the peculiar facts and circumstances of the case and in case such controversy arises, in future of Scheduled Castes and Scheduled Tribes employees of other banks, in our view the parties will be free to get the controversy decided by a proper forum by placing their respective stands. With the above observations we dismiss the Review Petition filed by the Union of India and the Bank."

15. We have gone through the records of the case and have heard the learned counsel for the parties at length. On 13.11.1990, the Tribunal passed an interim order directing the respondents not to make any regular appointment to the post of Commissioner of Income Tax/ Director of Income Tax pursuant to the recommendations of the D.P.C. which had been held by the respondents for filling up 54 posts of Commissioner of Income Tax/Director of Income Tax in the pay-scale of Rs.5900-6700. The said order was continued thereafter till the case was finally heard on 21.1.1991. Thereafter, the respondents have filed MP-1256/91 on 19.4.1991 together with a copy of the order of the Supreme Court dated 1.4.1991 in the Review Petition filed by the Syndicate Bank against the judgement of the Supreme Court dated 10.8.1990.

16. In the instant case, the respondents have not controverted the version of the applicants that the representations of the SC/ST communities in the various grades of the Indian Revenue Service is not to the desired extent. No person belonging to SC/ST communities has been appointed as Member, C.B.D.T. or as Chief Commissioner, Income Tax by extending the provisions of

reservation to these categories of posts. Under the existing instructions, reservation will apply only to the posts of Assistant Commissioner/A.D., Income Tax and Dy. Commissioner/Dy. Director, Income Tax. Reservation will not apply to the higher posts of Commissioner of Income Tax/Director of Income Tax, Chief Commissioner of Income Tax/D.G. of I.T. and Members, C.B.D.T.

17. The respondents have stated in their counter-affidavit that they are strictly guided by the circulars and instructions issued by the Department of Personnel. According to the latest instructions, in promotions by selection within Group 'A' to posts which carry an ultimate salary of Rs.5700/- per month, there is no reservation. According to our perception, the decisions of the Supreme Court in the case of Bihar State Harijan Kalyan Parishad and Syndicate Bank SC and ST Employees Association, are not relevant. In these cases, the Supreme Court had considered the validity of the Presidential Directives which were applicable to promotions by selection to posts within Group 'A' which carry an ultimate salary of Rs.2250/- p.m. or less (Rs.5700 revised). The applicants before us are seeking the benefit of reservation to still higher posts

carrying pay-scales of Rs.5900-6700, Rs.7300-7600 and above. In our view, no support can be derived from the aforesaid decisions of the Supreme Court to advance the plea of the applicants in this regard.

18. In the matter of appointment to Government service, members of the SC/ST are entitled to special consideration in view of the provisions of Article 16(4), so far as that would be consistent with the efficiency of the administration as envisaged in Article 335 of the Constitution. In Comptroller and Auditor General of India Vs. K.S. Jagannathan, 1986 SCC (L&S) 345 at 369, the Supreme Court observed that "However much one may desire to better the prospects and promote the interests of the members of the Scheduled Castes and the Scheduled Tribes, no sane-thinking person would want to do it irrespective of the considerations of efficiency or at the cost of the proper functioning of the administration and the Government machinery. Public good and public interest both require that the administration of the Government and the functioning of its Services should be carried out properly and efficiently." In our opinion, whether or not a provision for reservation to SC/ST be made for promotion to posts in Group 'A' Services carrying pay-scales above

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Rs.5700/- is a matter for the Government to consider, as the Government is the best judge of what constitutes public good and public policy. In this view of the matter, it will not be appropriate to hold that the Indian Revenue Service Recruitment Rules, 1988 are illegal or unconstitutional or to declare that the reservation in favour of SC/ST is applicable to all Group 'A' Services of the Income Tax Department. The application is, therefore, dismissed at the admission stage itself, leaving the parties to bear their own costs.

19. MP-1256/90 was filed by the respondents seeking a rehearing of the case in the light of the order passed by the Supreme Court on 1.4.1991 in Review Petition Nos. 607 and 608/90. The parties were heard on the M.P. on 29.4.1991 and no specific orders are required to be passed thereon.

Chakravorty
(D.K. Chakravorty)
Administrative Member

Kartha
(P.K. Kartha)
Vice-Chairman (Judl.)